

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Rules Governing Telephone)
Companies' Use of Customer)
Proprietary Network)
Information)

CC Docket No. 90-623
CC Docket No. 92-256

To: The Commission

COMMENTS OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL

The Utilities Telecommunications Council (UTC) hereby submits its comments on the Federal Communications Commission's Public Notice (Notice), released March 10, 1994, regarding the use of Customer Proprietary Network Information (CPNI) by telephone companies.^{1/} UTC applauds the FCC for its willingness to explore the impact that changes in the business environment have had on its rules relating to CPNI. UTC urges the FCC to require prior authorization for the use or disclosure of CPNI for business customers by any local exchange company (LEC).

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. Approximately 2,000 such companies are members of UTC, ranging in size from large combination electric-

^{1/} The Notice, FCC 94-63, requires that parties file comments by April 11, 1994.

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gas-water utilities serving millions of customers, to small rural electric cooperatives and water districts serving only a few thousand customers. UTC is also the Federal Communications Commission's (FCC) certified frequency coordinator for the Power Radio Service. All utilities and pipelines depend upon reliable and secure communications facilities in carrying out their public service obligations. UTC's members are large end-users of carrier-provided telecommunications services. Therefore, UTC has an interest in this proceeding.

In its Notice, the FCC seeks comments regarding customers' CPNI-related privacy expectations, and whether any changes in its rules are required to achieve the optimal balance between customers' privacy interests, competitive fairness, and efficiency. The Notice responds in part to recent announcements of LEC alliances with and acquisitions of businesses in other communications fields and requests comments on changes required to protect privacy and preserve fairness in the changing business and regulatory environment.

Under the current rules, any customer can request that its CPNI be withheld from the BOCs' enhanced services and customer premises equipment (CPE) marketing personnel. However, such personnel are generally allowed to make use of CPNI without prior customer authorization; prior authorization is required only before BOC enhanced services marketing personnel are given access

to the CPNI of customers with more than twenty lines. Third parties must obtain advance authorization from the customer in order to obtain access to CPNI. The current rules also require that the BOCs provide annual written notices to multi-line business customers of their CPNI rights. These rules do not apply to independent telephone companies, although they do apply to the provision of enhanced services by GTE.

In various proceedings, the FCC has applied these rules to particular situations. For example, the FCC has concluded that customers' expectation of privacy can be satisfied without a notification obligation or a prior authorization requirement for internal BOC use of residential and small business customers' CPNI.^{2/} The FCC has concluded that a prior authorization rule would, as a practical matter, deny all but the largest customers the benefits of one-stop shopping for basic and enhanced services by BOCs.^{3/} Further, the FCC has also determined that significant privacy concerns are not raised by access to CPNI by employees of a single, integrated company.^{4/}

^{2/} See Amendment of Section 64.502 of the Commission's Rules and Regulation (Third Computer Inquiry), CC Docket No. 85-229, 2 FCC Rcd 3035, ¶164 (1987); see also Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier I Local Exchange Company Safeguards (Computer III Remand Order), 6 FCC Rcd 7571, n.159 (1991).

^{3/} Computer III Remand Order at 7610, n.155.

^{4/} Computer III Phase I Further Reconsideration Order, 3 FCC Rcd 1135, 1139 (1988).

UTC urges the FCC to protect CPNI from unauthorized use and disclosure by requiring affirmative customer authorization prior to its release or use. Such a rule would recognize the proprietary nature of CPNI, ensure that no company has an unfair competitive advantage over other companies and reduce the potential for unauthorized use of CPNI to hamper competition in telecommunications and related markets.

UTC recognizes the FCC's attempts to balance customers' privacy, competitive equity and efficiency. With regard to the use and disclosure of CPNI, customers' privacy concerns must be given sufficient weight. Utilities, for example, require secure and reliable communications services and, for this reason, generally operate private communications systems to meet certain communications needs. When a utility obtains service from a communications common carrier, therefore, it reveals information only on a "need to know" basis. The use of such confidential information could affect the security of utility communications systems.^{5/}

^{5/} As UTC pointed out in previous comments on this issue, the Department of Energy has in the past issued advisories to utilities recommending increased levels of security awareness due to international and domestic situations. Several incidents have been reported of individuals trying to obtain information of utility communications facilities and capabilities. UTC's Comments to NPRM, CC Docket No. 90-623 at p. 5, n.4 (filed March 8, 1991).

The FCC is correct in recognizing that changing business conditions create new concerns regarding CPNI. Current and future mergers and alliances with cable television companies, information service providers and other companies will increase the incentive for LECs to use and release CPNI to further business interests. Furthermore, acquisitions and mergers will blur the distinction between the use of CPNI by one integrated company and the acquisition of CPNI by third parties through mergers with LECs.

Requiring prior consent before the use and disclosure of CPNI will also foster competition in telecommunications markets. Pending legislative and regulatory proceedings hold the promise of opening up monopoly markets to competition. Competition would eventually reduce or eliminate the need for regulations, including CPNI rules. However, in the interim period before full and effective competition exists, the FCC must ensure that no carrier has an unfair advantage and that all carriers are placed on a level playing field. Requiring all carriers to obtain prior authorization for the use of CPNI is one step in leveling the playing field.

UTC urges the FCC to adopt the same rules for small businesses and to apply these rules to all LECs, including independent LECs. The need for privacy and for competitive fairness is not dependant on the size of the business or the LEC

providing service, it is dependent upon the customer. The privacy of CPNI must be assured for all businesses in all areas.

Conclusion

UTC applauds the FCC for its recognition that changing conditions warrant a re-examination of its CPNI rules. UTC urges the FCC to adopt a rule requiring prior authorization before any LEC's enhanced services or CPE personnel make use of CPNI of any business customer.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council requests the Federal Communications Commission to take action in accordance with the views expressed herein.

Respectfully submitted,

**UTILITIES TELECOMMUNICATIONS
COUNCIL**

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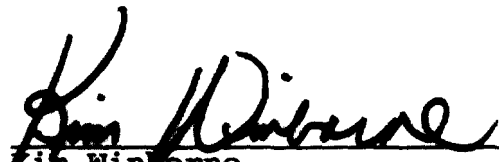
April 11, 1994

CERTIFICATE OF SERVICE

I, Kim Winborne, a secretary with the Utilities Telecommunications Council, hereby certify that I have caused to be sent, this 12th day of November, 1993, by first class mail, postage prepaid, copies of the foregoing to each of the following:

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